Supreme Court, U.S.
FILED

05-531 AUG 10 2005

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Greg L. Carter,

Petitioner

v.

Rebecca Raish

On Petition for Writ of Certiorari
To the Colorado Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Greg L. Carter
Pro Se
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INTRODUCTORY STATEMENT

The State of Colorado has deprived Petitioner of his child custody and property **without** notice or due process. A child custody judgment was entered without Petitioner's knowledge, notice, or due process. That judgment was subsequently used in another court to quadruple Petitioner's child support, again, without service, notice, or due process. Those judgments were subsequently used to obtain a judgment in a fraudulent conveyance action.

Upon discovery of the judgments Petitioner motioned the court entering the latest of the two judgments to set aside both judgments pursuant to State C.R.C.P. rule 60(b). This motion was denied by a magistrate. A timely motion to "reconsider" that ruling was filed and subsequently lost by the court.

Upon discovery of the lost motion, another motion to "reconsider," and a motion to "review" that ruling by a judge pursuant to State C.R.M. was filed simultaneously. The motion to "reconsider" was denied by the magistrate and the pending motion to "review" was denied by a judge, citing C.A.R. as governing her ruling.

Petitioner timely filed a Notice of Appeal followed by a timely Opening Brief (case no. 03CA2361 /05SC153). The timely filed and lost motion was proven in the Opening Brief and proven in a show cause order, however the appeal was dismissed because the lost and timely filed motion was a motion to "reconsider" and not a motion for "review." The fraudulent conveyance action was appealed in case no. 03CA0671/05SC119 and was upheld based on the latter judgment(s).

QUESTIONS FOR REVIEW

1) Did the Colorado Court of Appeals err in dismissing the appeal for lack of jurisdiction?

2) Did the Colorado Court of Appeals err in upholding the fraudulent conveyance judgment which is based upon a Magistrate's unauthorized ruling?

3) Are the Colorado Appellate Rules and Colorado Rules for Magistrates unconstitutionally vague?

PARTIES

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28 U.S.C. §2403 may apply, and pursuant to Rule 29.4(c), the Colorado Attorney General has been served.

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CITATIONS

Colorado Supreme Court-05SC153 and 05SC119
2 East 14th Ave.
Denver, CO 80218

Colorado Court of Appeals-03CA2361 and 03CA0671
2 East 14th Ave.
Denver, CO 80218

Jefferson County Court-96DR2267 and 01CV2338
100 Jefferson County Parkway
Golden, CO 80401

BASIS FOR JURISDICTION

This Petition for Writ of Certiorari, being timely filed after exhausting state remedies, is proper before this court and pursuant to 28 U.S.C. §2254(b).

The order on review was entered on May 16, 2005 (appendix 3) and after a timely filed petition on August 17, 2005, the Clerk of this Court imposed a filing date of October 14, 2005 for this amended petition in booklet form.

REASON FOR GRANTING WRIT

Although rarely granted, this writ is needed and warranted due to its public effect on so many citizens.

The State of Colorado is summarily dismissing thousands of Appeals and in contradiction to the finding of a division of the same court, depriving its citizens of their constitutional right to due process and Appellate review of judgments; depriving them of custody and property rights. See Rule 10 (b) and U.S. Constitution Amend. V and Amend. XIV.

The number of cases and citizens affected by the summary dismissal of their appeal is too numerous to list or determine. The few cases cited herein and the corresponding rulings and conclusions clearly show a public problem, a detrimental void and conflict in the statutes at issue rendering the dismissal of these appeals and the controlling statutes unconstitutional; resulting in denial of fair warning and due process. For these reasons, direction and clarification is warranted from this court.

The Appellate Court dismissed the Appeal on a jurisdictional ground which is a denial of due proc-

ess. The unconstitutionality of that decision was raised in a Petition for Certiorari to the Colorado Supreme Court and was subsequently denied. There is no other court from which relief may be obtained.

The District Court has upheld a judgment which has been deemed void by the Appellate Court. The Appellate Court, refusing to combine the cases, has upheld a subsequent judgment based upon that underlying judgment deemed void by another division of the same court; and the Colorado Supreme Court has denied Certiorari on both rulings.

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SUMMARY OF ARGUMENT

The state courts, attorneys, and litigants alike are confusing Colorado Appellate Rules (C.A.R.) and Colorado Rules for Magistrates (C.R.M.). Numerous cases have been convoluted prompting the appellate courts to make certain determinations regarding appeals taken from a ruling entered by a magistrate where the C.A.R. and the C.R.M. have been misconstrued. See *In re the Marriage of Roosa*, 89 P.3d 524 (Colo. App. 2004); II A ¶ 5 (although statute instructs supreme court to promulgate rules of procedure to govern family law magistrates, to date the supreme court has promulgated only C.R.M., which do not contain a separate section on procedure and address only a few areas of procedure) citing *In re the Marriage of Talbott*, 43 P.3d 734 (Colo. App. 2002).

It is common sense to follow Colorado Appellate Rules (C.A.R.) when seeking an appeal. C.A.R. contain no provision to follow Colorado Rules for Magistrates (C.R.M.) when seeking an appeal from a magistrates ruling.

C.R.M. are to be followed only when the Magistrate had the authority to act "without" consent, otherwise, C.A.R. must be followed. When, as here, an appellant was not involved in the proceeding due to no service or notice of the proceeding he would not know which rule to follow.

The two rules are inept, are not harmonized, and are causing scores of due process problems throughout the State of Colorado.

With the confusion between C.R.M. and C.A.R. the Colorado Court of Appeals has determined that a motion for reconsideration as used in

C.A.R. may be construed as a motion for review as used in C.R.M. See *In re the Marriage of Roosa, supra;* II B ¶ 2 (... order issued in response to father's motion for reconsideration was void.) citing *In re the Marriage of Phelps,* 74 P.3d 506, 509 (Colo. App. 2003), and ¶ 3 (nonetheless, because father filed his motion for re-consideration within fifteen days of the magistrate's written order, and the motion was erroneously acted upon by the magistrate, the motion for reconsideration may be construed as a motion for district court review). Of course the court of appeals considered the contents of the appeal in making this determination where other cases, as this case, are being summarily denied on jurisdictional grounds even though they contain the identical issue.

As shown in this case, the subsequent determinations are not applied to every case; denying equal protection, and rendering the C.R.M. and C.A.R. unconstitutionally vague.

In the case of *In re the Marriage of Moore,* 107 P.3d 1150 (Colo. App. 2005), the court cites its ruling in *Roosa, supra,;* I (in 2004, case was remanded for district court review of a magistrate's order, even though motion for reconsideration had been filed nearly two years earlier). Remanded because they required a judge's final ruling for appellate jurisdiction.

The Colorado Court of Appeals has dismissed this Petitioner's appeal, without considering the contents of the appeal, on jurisdictional grounds citing 1) failure to file a motion to review pursuant to C.R.M., 2) magistrate lacked authority to enter a ruling on a C.R.C.P. rule 59 or 60 motion,

and in doing so fails to recognize its own holdings in *In re the Marriage of Roosa, supra.*

The Colorado Court of Appeals first dismissed the appeal on a show cause order citing the magistrate had authority to rule on the motion and therefore they had no jurisdiction (because a motion to review pursuant to C.R.M. had not been filed even though a timely motion to reconsider had been filed). Thereafter the same court denied a petition for rehearing citing the magistrate did not have authority to rule on the motion and therefore they had no jurisdiction (even though the magistrate acted upon the motion to reconsider and a judge acted upon a motion to review). The rulings show further confusion, were summarily concluded without considering the circumstances presented in the appeal, are contradictory, and in conflict with the holdings in *Roosa, supra,* and related cases. The circumstances in this case are parallel with those in *Roosa, supra,* however the merits were never reached due to the erroneous summary dismissal of this appeal. Further issues in the appeal affecting the determination of whether C.A.R. or C.R.M. were to be used ; whether the magistrate was acting with or without consent (unknown to absent Petitioner),were never considered due to the summary dismissal. Because Petitioner was never served and not present, he was never advised of his right to, or procedure for, appeal. Every due diligence has been put forth yet Petitioner has been denied due process at each and every level of the State Courts.

Denial of due process in violation of both State and Federal Constitutions was raised in the petition for rehearing in the Appellate Court and in